UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF VIRGINIA
LYNCHBURG DIVISION

SYLVIA LEEDS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Civil Action No. 6:09CV00061**
	)	
JOHN DOE ONE et al.,	)	
	)	
Defendants.	)	
	)	

PLAINTIFF'S AND DEFENDANT PENDUM LLC'S
JOINT MOTION FOR VOLUNTARY DISMISSAL

COME NOW Plaintiff Sylvia Leeds and Defendant Pendum LLC ("Pendum"), by counsel, and, pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure, move the Court to dismiss all of Plaintiff's claims against Pendum in this action without prejudice, each party to bear its own attorneys' fees and costs. A proposed order granting this Motion is submitted herewith. In support of this Motion, Plaintiff and Pendum state as follows:

1. On October 14, 2009, Plaintiff instituted this action against Pendum and The Kroger Co. ("Kroger") in the Circuit Court for the City of Lynchburg, and on November 13, 2009, Pendum and Kroger removed the case to this Court. (*See generally* Notice of Removal [DE 1].)

2. Since February 9, 2010, when the parties submitted their Proposed Discovery Plan under Rule 26(f), the parties have been engaged in discovery. On April 14, 2010, Pendum deposed Plaintiff, and on April 20, 2010, Plaintiff deposed Pendum's employee and Kroger's employees.

3. At the conclusion of the above-referenced depositions, Plaintiff determined to pursue its claims only against Kroger and to dismiss its claims against Pendum.

4. As reflected in the filing of this Joint Motion, Pendum consents to Plaintiff's dismissal of her claims against Pendum.

5. Through counsel, Kroger has advised Plaintiff and Pendum informally that it does not consent to Plaintiff's decision not to sue Pendum and that Kroger intends to "oppose" a motion for voluntary dismissal of Pendum. Thus, Kroger does not join in this Motion.

6. Kroger has not filed a crossclaim or any other claim against Pendum or a counterclaim or any other claim against Plaintiff, and Kroger has not filed a third-party complaint against any other party. In fact, no counterclaims, crossclaims, or third-party claims are pending in this action.

7. Thus, Kroger's opposition is without merit. *See, e.g.*, *Protocomm Corp. v. Novell Advanced Servs., Inc.*, 171 F. Supp. 2d 459, 471 (E.D. Pa. 2001) (granting a motion for voluntary dismissal of one defendant over co-defendants' objections because the co-defendants could still argue at trial that the dismissed defendant was responsible and the co-defendants' rights to indemnification and contribution were unaffected by the plaintiff's decision not to pursue claims against the dismissed defendant).

WHEREFORE, Plaintiff and Defendant Pendum LLC respectfully move this Court to enter an order granting voluntary dismissal, without prejudice, of all claims against Pendum LLC.

Dated: April 27, 2010

Respectfully submitted,

SYLVIA LEEDS

and

PENDUM LLC

By counsel

/s/

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CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of April, 2010, I will electronically file the foregoing with the Clerk of the Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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